IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1631 OF 2006

DILIP NAROTTAM KAWA ..PETITIONER

V/S

THE S.E.M. & ORS. ..RESPONDENTS

SHRI SANJEEV P. KADAM FOR PETITIONER.

SHRI P.S. HINGORANI - APP FOR STATE.

CORAM: V.M. KANADE, J.

DATE : 17TH AUGUST, 2007.

P.C.

1. Heard learned counsel for the petitioner. The petitioner by this petition challenges the show cause notice issued by the Special Executive Magistrate under section 107 of the Code of Criminal Procedure. Learned counsel appearing for the petitioner submits that in the show cause notice nowhere it is stated that the petitioner was responsible for committing breach of peace in the said locality. He submits that therefore the basic ingredients of section 107 of Cr. P. C. are absent and the show cause notice on this ground itself is liable to be quashed. Learned counsel for the petitioner submits that solitary incident has taken place between the petitioner and his brother in a

private dispute. He submits that prior to

the said incident the petitioner has never been involved in any criminal case and he has also never come to the adverse notice of the police at any time in the past. He submits that in the criminal case which was lodged against the petitioner he was released on bail and certain conditions have been imposed by the trial court. It is submitted that therefore this solitary incident cannot form the basis of proceeedings which can be initiated under section 107 of the Code of Criminal Procedure. In support of the said submission learned counsel has relied on the judgment of this court in case of Javed Hasan Sanghe v/s State of Maharashtra & Anr. reported in 2002 ALL MR (Cri.) 566.

2. However it is not possible to accept the submissions of the learned counsel for the Petitioner. It is admitted position that a criminal complaint was lodged against the petitioner and he was arrested in the above offence on 20-5-2006 and later on he was released on bail. The petitioner also filed a cross complaint against his brother. Thereafter a show cause notice has been issued by the Special Executive Magistrate in which the incident in question is narrated and thereafter it is stated that the petitioner herein has assaulted his brother with a wooden rod.

3. The petitioner therefore was asked to show cause as

to why the proceedings under section 107 of Cr. P.C. should not be initiated against him and why he should not be asked to give a bond of good behaviour for a period of one year.

4. In my view the petition filed by the petitioner is premature. The show cause notice merely states that the petitioner is required to show cause why action should not be initiated against him. The petitioner is at liberty to give reply to the show cause notice and satisfy the Special Executive Magistrate that the proceeding under section 107 of Cr. P. C. should not be initiated in the facts and circumstances of the case.

5. The submission made by the learned counsel for the petitioner that the show cause notice should mention that the petitioner has committed breach of the peace and in absence of such statement in the show cause notice itself makes the notice illegal, cannot be accepted. Perusal of section 107 of Code of Criminal Procedure merely indicates that power given to the Special Executive Magistrate to initiate proceedings against any person in the event he comes to the conclusion on the basis of the information received by him that there is possibility of there being breach of

peace in the area within his jurisdiction.

Section 107 of Cr. P. C. reads as under :-

107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond (with or without sureties) for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction."

6. Perusal of the aforesaid section clearly discloses that the Executive Magistrate has to be satisfied that any person is likely to commit a breach of peace or

disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. The opinion of the Executive Magistrate therefore is subjective satisfaction which according to him exist for proceeding under the aforesaid provisions. It is therefore not necessary for him to mention in the show cause notice that the petitioner himself has already committed the breach of peace. The section does not contemplate that party against whom a show cause notice is issued should have committed any act. In fact the Executive Magistrate has to be satisfied on the material which is placed before him that any person is likely to commit a breach of peace. In my view the ratio of the aforesaid judgment, Javed Hasan Sanghe (Supra) will not apply to the facts of this case. In the said case there was no material mentioned in the show cause notice that there was possibility of breach of peace and that the petitioner was responsible for the breach of peace. In the present case the statement has been made to that effect in the show cause notice. Hence there is no merit in the Writ Petition. The Writ Petition is dismissed. The Petitioner is at liberty to file his reply to the show cause notice. The Special Executive Magistrate shall consider the reply which will be filed

by the petitioner and shall decide the show cause notice on merit in accordance with law. The Petition is dismissed.

(V.M. KANADE, J)